

REMARKS

Applicant has amended claims 1-7, 9-13 and 15 and canceled claims 8, 14 and 16 and further amended the specification. Applicant respectfully submits that these amendments to the claims and the specification are supported by the application as originally filed and do not contain any new matter. Accordingly, the Office Action will be discussed in terms of the specification and claims as amended.

The Examiner has pointed out that Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 USC 119(e) and 120 in that the application does not contain specific reference to the prior applications. Applicant has amended the specification to include the reference to prior applications.

The Examiner has objected to the claims and pointed out an alleged misspelling in claims 9, 11 and 14. Applicant has carefully reviewed claims 9, 11 and 14 where indicated by the Examiner and has found no such misspelling.

The Examiner has rejected claims 1-6 and 9-12 under 35 USC 101 as directed to non-statutory subject matter. In view of the above amendments to the claims, Applicant respectfully submits that claims 1-6 and 9-12 are now directed to statutory subject matter.

The Examiner has rejected claims 1-16 under 35 USC 112, first paragraph, as failing to comply with an enabling requirement.

In reply thereto, Applicant respectfully submits that the Disclosure of the Invention portion of Applicant's application contained at pages 3-6 and particularly pages 4 and 5 set forth the subject matter in such a way as to enable one of ordinary skill in the art to which it pertains to make and/or use the invention. In particular, Applicant respectfully submits that the present invention as claimed is limited to somatic stem cells and does not claim sexual performance improving activity. In addition, Applicant respectfully submits that as described in Applicant's application, the high percentage of daizein, namely 70% of the isoflavone aglycone, has estrogen-like activity and binds with the estrogen receptor (ER) to activate the fusion protein (STAT3ER) of step 3 (STAT3). Therefore, Applicant respectfully submits that claims 1-7, 9-13 and 15 comply with the requirements of 35 USC 112, first paragraph.

The Examiner has rejected claims 1-16 under 35 USC 112, second paragraph, as being indefinite.

In reply thereto, Applicant would like to incorporate by reference her comments above concerning the 35 USC 112, first paragraph rejection and in addition point out that Applicant has amended claim 9 to more define it as an invention and refer the Examiner to page 3, paragraph 4 and the paragraph bridging pages 17 and 18 of Applicant's application. Accordingly, Applicant respectfully submits that claims 1-7, 9-13 and 15 comply with the requirements of 35 USC 112, second paragraph.

The Examiner has rejected claims 1-6 and 9-12 under 35 USC 102 as being anticipated by Luksas et al.

In reply thereto, Applicant has carefully reviewed Luksas et al. and respectfully submits that Luksas et al. does not disclose that isoflavone aglycone would be daizein or that the daizein would comprise 70% of the isoflavone aglycone. Accordingly, Applicant respectfully submits that Luksas et al. does not disclose each and every element of Applicant's invention and claims 1-6 and 9-12 are not anticipated thereby.

The Examiner has rejected claims 1-6 and 9-12 under 35 USC 102 as being anticipated by Groben et al.

In reply thereto, Applicant would like to point out that Groben et al. does not discuss fermentation using koji mold and further does not disclose isoflavone aglycones which would contain a high concentration of daizein, namely 70% of isoflavone aglycone. Therefore, Applicant respectfully submits that claims 1-6 and 9-12 are not anticipated Groben et al.

The Examiner has rejected claims 1-6 and 9-12 under 35 USC 102 as being anticipated by Bojrab et al.

In reply thereto, Applicant would like to point out that Bojrab et al. does not discuss fermentation using koji mold and further does not disclose isoflavone aglycones which would contain a high concentration of daizein, namely 70% of isoflavone aglycone. Therefore, Applicant respectfully submits that claims 1-6 and 9-12 are not anticipated Bojrab et al.

The Examiner has rejected claims 1-16 under 35 USC 102 as being anticipated by Takebe et al. '632.

In reply thereto, Applicant would like to point out that Table 3 relates to daidzein (see col. 8, lines 23-32) and further does not state the total amount of isoflavone aglycones from which some one could compute a total percentage. In contrast thereto, Applicant's claims are limited to daizein and that isoflavone aglycone would contain at least 70% daizein. Therefore,

Applicant respectfully submits that claims 1-7, 9-13 and 15 are not anticipated Takebe et al. '632.

The Examiner has rejected claims 1-16 under 35 USC 102 as being anticipated by Takebe et al. '819.

Applicant has carefully reviewed Takebe et al. '819 and respectfully submits that Takebe et al. '819 is limited to daidzein (see col. 11, lines 33-41) and not daizein as claimed in Applicant's invention. Still further, Applicant respectfully submits that Takebe et al. '819 does not disclose a total amount of isoflavone aglycones contained and therefore a percentage cannot be computed. Therefore, Applicant respectfully submits that claims 1-7, 9-13 and 15 are not anticipated Takebe et al. '819.

The Examiner has rejected claims 1-16 under 35 USC 102 as being anticipated by Takebe et al. '161.

Again, Applicant has carefully reviewed Takebe et al. '161 and respectfully submits that it relates to daidzein and not daizein, as is required in Applicant's invention. Still further, Applicant respectfully submits that Takebe et al. '161 does not disclose a total amount of isoflavone aglycone and therefore a percentage cannot be computed. As a result, Applicant respectfully submits that claims 1-7, 9-13 and 15 are not anticipated Takebe et al. '161.

The Examiner has rejected claims 1-7, 9-13 and 15 under 35 USC 102 as being anticipated by Obata et al. '632.

Again, Applicant respectfully submits that Obata et al. is directed to daidzein and not daizein. In addition, the amount of daidzein in Obata et al. is 40% and the total amount of isoflavone aglycone is 52%. As a result, Applicant respectfully submits that Obata et al. does not teach 70%. Therefore, Applicant respectfully submits that claims 1-7, 9-13 and 15 are not anticipated Obata et al.

The Examiner has rejected claims 1-16 under 35 USC 102 as being anticipated by Kelly et al.

Again, Applicant has carefully reviewed Kelly et al. and respectfully submits that it relates to daidzein and not daizein, as in Applicant's invention. Still further, while Kelly et al. mentions isoflavone aglycone such as daizein and genistein, it does not exclude isoflavone aglycones and therefore total percentage of the daidzein cannot be computed. As a result, Applicant respectfully submits that claims 1-7, 9-13 and 15 are not anticipated Kelly et al.

The Examiner has rejected claims 1-7, 9-13 and 15 as being anticipated by copending application No. 09/284,935.

In reply thereto, Applicant would like to point out that application No. 09/284,935 does not teach the high percentage of daizein, namely 70%, which is required by Applicant's application. Therefore, Applicant respectfully submits that claims 1-7, 9-13 and 15 are not anticipated by application No. 09/284,935.

The Examiner has rejected claims 1-16 under 35 USC 102(f), stating that each of the cited patents and copending application have a different inventive entity, but anticipate the instant claims, thus it is unclear who is the real inventor.

As discussed above, Applicant respectfully submits that the invention of Applicant's application is different from each of the cited patents and copending application. Therefore, Applicant respectfully submits that claims 1-7, 9-13 and 15 are not rejectable under 35 USC 102(f).

The Examiner has rejected claims 1-16 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-10 of USP 5,885,632, unpatentable over claims 7 and 8 of UPS 6,045,819, unpatentable over claims 1-9 of USP 6,303,161 and unpatentable over claims 1-4 of application No. 09/284,935. Submitted herewith is a terminal disclaimer and Applicant respectfully requests that these judicially created doctrine of obviousness-type double patenting rejection be withdrawn.

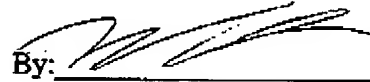
Applicant further respectfully and retroactively requests a three month extension of time so as to respond to the Office Action. Please charge Deposit Account No. 11-1445 in the sum of \$950.00 as the fee.

In view of the above, therefore, it is respectfully requested that this Amendment be entered, favorably considered and the case passed to issue.

Please charge any additional costs incurred by or in order to implement this Amendment or required by any requests for extensions of time to KODA & ANDROLIA DEPOSIT ACCOUNT NO. 11-1445.

Respectfully submitted,

KODA & ANDROLIA

By: 

William L. Androlia
Reg. No. 27,177

2029 Century Park East
Suite 1430
Los Angeles, CA 90067
Tel: (310) 277-1391
Fax: (310) 277-4118

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office Fax No. (703) 872-9306 on August 12, 2004.

William L. Androlia

Name

Signature

8/12/2004

Date